

EXHIBITS

Proceeding/Serial No: 91161373

Filed: 11-20-2006

Title: Notice of Reliance Under Rule 2.122(c)

Document contains a CD-Rom marked as Exhibit 227.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA COMPANY)	
)	
Opposer,)	Opposition No. 91161373
)	
v.)	
)	
BARILLA G. E R. FRATELLI - SOCIETA)	
PER AZIONI,)	
Applicant.)	

OPPOSER'S NOTICE OF RELIANCE UNDER RULE 2.122(c)

Notice is hereby given, pursuant to Trademark Rule 2.122(c), that Opposer, American Italian Pasta Company, is filing and placing in evidence Opposer's Exhibits 226 through 227, and will rely upon evidence herein, the following exhibits to pleadings attached hereto:

Opposer's Exhibit 226	Opposer's Subpoena Duces Tecum on Unilever United States, Inc., dated October 19, 2006;
Opposer's Exhibit 227	Declaration of Stuart M. Cobert, Unilever United States, Inc., dated November 9, 2006, and exhibits thereto (Bates No. U00001-U04570).

These documents were produced by Opposer's predecessor-in-interest, Unilever United States, Inc., in response to Opposer's third-party subpoena. They evidence Opposer's predecessor's use of AMERICA'S FAVORITE PASTA in commerce and extent of such use based on the predecessor's financial information, distribution information, advertising ad promotion, and historical information. This evidence proves that AMERICA'S FAVORITE PASTA is capable of and has acquired distinctiveness.

Respectfully submitted,



Thomas H. Van Hoozer, Reg. No. 32761
Cheryl L. Burbach
HOVEY WILLIAMS LLP
2405 Grand Blvd., Suite 400
Kansas City, MO 64108
Phone: 816/474-9050
Fax: 816/474-9057

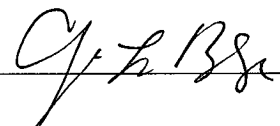
Attorney for Opposer

CERTIFICATE OF MAILING

The undersigned hereby certifies that *Opposer's Notice of Reliance Under Rule 2.122(c)* is being deposited with the United States Postal Service as First Class U.S. Mail addressed to:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

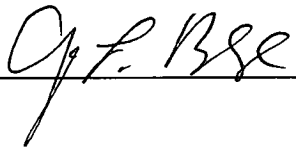
on this 13th day of November, 2006.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Reliance was served by first class mail,
postage prepaid, this 13th day of November, 2006, on the following:

G. Franklin Rothwell
Brian E. Banner
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005
Fax: (202) 783-6031

_____

American Italian Pasta Company

v.

Barilla Alimentare S.P.A.

Opposition No. 91161373

Opposer's Exhibit 226

**Issued by the
UNITED STATES DISTRICT COURT**

DISTRICT OF

NEW JERSEY

American Italian Pasta Company, Opposer
V.
Barilla G. E R.
Fratelli-Societa, Applicant

SUBPOENA IN A CIVIL CASE
Before the Trademark Trial and
Appeal Board pursuant to 35 USC 24
Case Number:¹ Opposition No. 91161373

TO: Unilever United States, Inc., Attn: Stuart Cobert, Esq.
700 Sylvan Avenue
Englewood Cliffs, NJ 07632

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

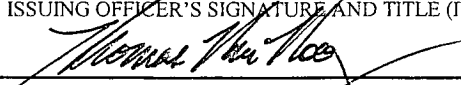
See Exhibit A

PLACE Thomas Van Hoozer, Hovey Williams, LLP, 2405 Grand, Blvd., Suite 400, Kansas City, MO 64108	DATE AND TIME October 30, 2006 at 9:00 a.m.
--	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) 	DATE October 19, 2006
---	--------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Thomas Van Hoozer, Hovey Williams, LLP, 2405 Grand, Blvd., Suite 400, Kansas City, MO 64108, (816) 474.9050

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCHEDULE A- Bestfoods

The term "Documents" means all written, printed, recorded or graphic material, photographic matter or sound reproduction, however produced or reproduced, including but not limited to, all e-mails, letter, memoranda, interoffice communication, correspondence, notes, worksheets, file notations, photographs, tape recordings, invoices, including all such items saved on or contained in computer information storage systems such as computer tapes, disks or memory. The term "Advertisement" any communication, the purpose of which is or was, in whole or in part, to promote sales or product awareness in any medium or location.

1. All Documents related to Mueller's brand pasta dry packaged pasta products sold in the United States.
2. All Documents related to the slogan "America's Favorite Pasta."
3. All Advertisements (including without limitation web sites, web markers, FSI's promotional materials, sales materials, sales training materials, point of sale materials) where the phrase "America's Favorite Pasta" has appeared.
4. All Documents from, and all Documents memorializing or commenting upon communications from or with consumers where the phrase "America's Favorite Pasta" is mentioned.
5. All Documents related to consumer perception of any Mueller's Advertising and Packaging.
6. All Documents related to any focus group or other consumer response studies or surveys of or related to Mueller's packaging.
7. All Documents related to changes or proposed changes in Mueller's packaging during the time Bestfood's owned the Mueller's name and trademark.

8. All Documents related to customer or consumer customer satisfaction studies.
9. All Infoseek, IRI, Nielsen or comparable retail sales data, and all other market information for sales of Mueller's dried pasta in the United States.
10. All closing Documents in Bestfoods' sale of the Mueller's name and trademark.
11. All consumer, panel, or focus group data relating to the Mueller's brand.

American Italian Pasta Company

v.

Barilla Alimentare S.P.A.

Opposition No. 91161373

Opposer's Exhibit 227


[Signature]